MARY LEE

IBLA 72-328 Decided February 13, 1973

Appeal from a decision of the California State Office rejecting an application to purchase a portion of the Peg Leg mining claim filed under the Mining Claim Occupancy Act, and requiring appellant to pay rental for the time the claim was used.

Affirmed.

Mining Occupancy Act: Qualified Applicant

Where neither the applicant nor her predecessor was the owner-occupant of valuable improvements on an unpatented mining claim which constituted for either a principal place of residence for not less than seven years prior to July 23, 1962, an application for relief under the Mining Claim Occupancy Act must be rejected.

Claims by the United States

The Department of the Interior, pursuant to the Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1970), has invested the Solicitor with authority to compromise or terminate claims arising out of the activities of any bureau or other Departmental office prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. One of the grounds upon which a claim may be terminated or compromised is that of the unlikelihood of receiving payment. A factor to be considered is the debtor's present and potential income.

APPEARANCES: Mrs. H. S. Gilmore, Gilmore and Gilmore, Sacramento, California, for appellant.

OPINION BY MR. STUEBING

Mary Lee has appealed from the January 21, 1972, decision of the California State Office, Bureau of Land Management, which rejected her application S.939, filed under the Act of October 23, 1962, as amended, 30 U.S.C. § 701 et seq. (1970), to purchase a part of the Peg Leg mining claim. The rejection was based upon a finding by the State Office that the appellant was not qualified

under the Act, since the claim did not constitute a principal place of residence for the appellant or her predecessor in interest for a period of seven years prior to July 23, 1962, as required by the Act and regulations.

In this decision the State Office directed the District Office to offer the applicant a one-year nonrenewable special land use permit to allow her time to remove her improvements from the property. The rental for the year was fixed at $210. Charges for past use from 1957 to the date of decision were assessed at $1,453. The decision also noted that the Peg Leg mining claim was void ab initio because the land embraced in this claim had been withdrawn from location at the time the claim was located. 1/

Peg Leg mining claim, situated approximately one-quarter of a mile north of the New Don Pedro reservoir in Tuolumne County, was originally located and recorded in 1940. Zelda Davis, appellant's predecessor in interest, acquired title to this property by a quitclaim deed in 1953. In an interview, the substance of which is contained in the land report prepared in conjunction with the consideration of Mrs. Lee's application, Mrs. Davis stated that neither she nor her family occupied the premises during the time the property was in her name. A miner's shack was the only improvement located on the property. The Davises purchased a prefab house which they took to the claim, but never assembled.

On October 27, 1956, Mrs. Davis quitclaimed the property to appellant. Appellant's husband has resided on the claim continuously since 1956. Mrs. Lee and the children lived in Oakland, California, during the school year from 1956 to 1965, but resided on the claim when school was not in session. Since 1965, the entire family has lived on the claim.

On September 5, 1967, Mary Lee filed her application to purchase five acres of land embraced within the Peg Leg mining claim. She filed a relinquishment of the mining claim on the same day. In her application to purchase, she stated that there had been a six-room dwelling on the claim which was completed in 1953, but destroyed by fire in 1960. A second dwelling, a ten-room house completed in 1960, presently stands on the property. 2/

1/ This withdrawal was effected by Executive Order dated June 8, 1926, issued in connection with Reservoir Site Reserve No. 17 and the withdrawal for Power Site Classification No. 266 made pursuant to the Act of March 3, 1879 (20 Stat. 394), effective March 8, 1932.

2/ Appellant asserts that she has expended thousands of dollars "in fact and labor." According to reports submitted by the Department

Appellant does not challenge the holding of the State Office as it relates to the seven-year time requirement during which the applicant or his predecessor in interest must have been residential occupant-owners of the land. However, appellant requests that the use charge of $1,453, which the State Office levied upon her for living on the land from 1957 to 1970, be dropped because she and her husband have only welfare and social security payments with which to support themselves. Appellant also requests a waiver of the $210 charge which the District Office has determined Mrs. Lee would be required to pay for a one-year nonrenewable special land use permit to allow her to remove improvements.

Where a statement of reasons for appeal does not point out where in the decision appealed from is in error, as required by the rules of practice, the appeal will be dismissed. James and Anna Willis, 6 IBLA 272 (1972). However, in view of appellant's request for relief, we will consider the ramifications.

30 U.S.C. § 701 (1970) provides that the Secretary of the Interior may convey an interest, up to and including a fee simple, to any occupant of an unpatented mining claim who relinquishes to the United States all the rights under the claim which the occupant holds under the mining laws. The conveyance may only be made to an occupant qualified under section 702, who pays an amount established under section 705.

30 U.S.C. § 702 (1970) defines a qualified applicant as a residential occupant-owner, as of October 23, 1962, of valuable improvements on an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessor in interest were in possession of for not less than seven years prior to July 23, 1962.

The facts in this case show that appellant has failed to meet the seven-year time requirement specified by the Act. Seven years prior to July 23, 1962, Zelda Davis was not residing on the property; nor did anyone reside on the property until after October 1956 when Mr. Lee, at some unspecified time, moved to the claim and established permanent residency. These facts clearly demonstrate that appellant was not a residential occupant-owner as required by 30 U.S.C. § 702 (1970). An application must be rejected where the applicant fails to show that she has not complied with the residence requirement of this Act. H. T. Crandell, 72 I.D. 431 (1965);

(fn. 2 continued)
of Public Health and the Tuolumne County Building Department, the dwelling is substandard. The heating, plumbing, lighting, and sewage disposal systems are inadequate.

James and Anna Willis, supra. Therefore, we affirm the State Office decision as it relates to the appellant's lack of qualification under the Act.

Concerning the question of the $1,453 use charge which the District Office has assessed the appellant for living on the property from 1957 to 1970, and the $210 rental to be imposed under the Special Land Use Permit to be issued, we find that the appraisal report accomplished by the Bureau reflects the appropriate value, and we conclude that these charges are proper.

Pursuant to the Claims Collection Act of 1966, 80 Stat. 309, 31 U.S.C. §§ 951-953 (1970), the Solicitor is invested with the authority to compromise claims for money or property arising out of the activities of any bureau or other Departmental office prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. One of the grounds upon which a claim may be either compromised or the collection activity terminated is the unlikehood of receiving payment from the debtor. A factor to be considered is the debtor's present and potential income. 344 DM 3.2 and 4.3A.

In light of appellant's allegations regarding her financial situation we suggest that on return of the case to the State Office the question of pecuniary relief be reviewed in accordance with the procedures set out in BLM 1375E.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing, Member

We concur:

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Newton Frishberg, Chairman

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Martin Ritvo, Member